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ABSTRACT

This essay, one in a series about the priorities of the professoriate, seeks to explore variations on standard tenure practices that might be advantageous to the interests of both faculty and the institutions by proposing three modifications to traditional policies. The first, tenure by objectives, involves reconfiguration of the probationary period, stop-the-clock leaves, fixed membership of tenure candidates' review committees throughout the probationary period, and tenure contracts negotiated around the locus of the tenure commitment. The second involves post-tenure reviews that focus more on departments than on individual performance; some involve reviews of all faculty at set intervals, others involve selective reviews triggered by performance-related concerns. The third alternative proposal involves codification of academic freedom without tenure--offered, in part, as a response to the growing reliance on nontenure-track and part-time appointments. In accepting the reality that higher education can no longer do business as usual, it is the hope of the author of this paper to stimulate constructive conversations about faculty employment arrangements and to expand the range of policy options available. A draft of an Academic Freedom Policy and Procedures statement is appended. (Contains 57 references.) (CH)

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Working Paper Series

ED 424 819

Ideas in Incubation

Three Possible Modifications to Traditional Tenure Policies

By Richard Chait
Professor of Higher Education
Harvard Graduate School of Education

INQUIRY #9

HE 031 623

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NEW PATHWAYS: FACULTY CAREERS AND EMPLOYMENT FOR THE 21ST CENTURY
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About the Author

Richard Chait is a professor of higher education at the Harvard Graduate School of Education. Previously, he was a professor of higher education and management and the director of the Center for Higher Education Governance and Leadership at the University of Maryland; Mandel professor of nonprofit management at Case Western Reserve University; and associate provost at the Pennsylvania State University. His research has focused on two areas: academic administration and trusteeship, and he is widely known for his publications and work in the areas of tenure and the performance of boards of trustees. He holds a B.A. from Rutgers and an M.A. in history and Ph.D. in educational administration from the University of Wisconsin.

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The Forum on Faculty Roles & Rewards is a special program of the American Association for Higher Education (AAHE). It works with faculty leaders, senior academic administrators, trustees, legislators, and others interested in refocusing faculty priorities to address pressing institutional and societal needs. To advance this agenda, AAHE initiated a project called "New Pathways: Faculty Careers and Employment for the 21st Century." The New Pathways Working Paper Series addresses key issues related to changing faculty careers and employment arrangements; the series consists of 14 papers to be released during 1996-1998.

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FOREWORD

In 1992, AAHE entered into the growing national debate about the priorities of the professoriate by establishing the Forum on Faculty Roles & Rewards — a program that sponsors an annual national conference, issues publications, and serves as a general clearinghouse. Thus, when tenure surfaced in the spring of 1994 as a major issue of conversation and media attention, we became an interested party in the discussion.

On reflection, we decided that what was needed was not another familiar debate about the pros and cons of tenure but a new dialogue — a dialogue in which tenure was placed in a larger context of fresh thinking about two questions: What career paths make sense for the professoriate of the 21st century? What varieties of employment arrangements might most appropriately undergird these paths?

We also concluded that what might best help campuses work through these questions was not more philosophical argument but concrete options: practical ideas about new career paths and imaginative employment arrangements that campuses could try on for size.

AAHE's New Pathways project seeks to carry out that agenda. Project activities include (1) sponsoring forums to advance the dialogue; (2) serving as a general clearinghouse; and (3) initiating investigations into selected, particular issues.

Central direction for the project is provided by a three-person team: R. Eugene Rice, director of AAHE's Forum on Faculty Roles & Rewards; Richard Chait, professor of higher education, Harvard Graduate School of Education; and Judith Gappa, professor and vice president for human relations at Purdue University. Richard Chait's part of the project, which focuses on creative employment arrangements, is supported by a generous grant from the Pew Charitable Trusts.

The project team in turn benefits from the wise counsel of a four-person national advisory panel: Richard Lyman, president emeritus, Stanford University (chair); Andrew Hurwitz, attorney; Ejner Jensen, professor of English and special counsel to the president, University of Michigan; and Linda Wilson, president, Radcliffe College.

We wanted to make our own investigations quickly available in a form that was affordable, easily duplicated, and suggestive of what they really are: works in progress, intended to stimulate and enrich further discussion.

Russell Edgerton
President 1977-97, American Association for Higher Education
March 1996

Ideas in Incubation: Three Possible Modifications to Traditional Tenure Policies

by Richard Chait

Controversial as tenure is, a wide array of academics recently have sounded a common refrain: Traditional, textbook tenure, as codified by the "Recommended Institutional Regulations" of the American Association of University Professors (AAUP 1990), must change if tenure of any kind is to survive. Although each commentator offers a somewhat different rationale, the conclusion scarcely varies.

> *The question ... is not whether to preserve ... or abandon [tenure], but rather how we can adapt tenure to the changed and changing circumstances of the academic world.... [T]enure is not going to go away.... But tenure is not going to stay the way it is either.*
>
> — Adam Yarmolinsky (1997: 1), regents professor, University of Maryland

> *I am persuaded that some combination of economics, legality and rational common sense will eliminate, or at least seriously qualify, current tenure practices and assumptions.*
>
> — G. Dennis O'Brien (1998: 44), former president, Bucknell University and University of Rochester

> *Finally, we must confront the question whether the institution of tenure as we come to know it is likely to survive its present trials: uncapped mandatory retirement, financial stringencies, and public disapproval. There is a powerful reluctance to abandon it.... On the other hand, it exacts a price in productivity that many find unacceptable in hard financial times. In fact that argument may be moot. In many places, especially the large research universities, tenure may be slowly dying of natural causes.*
>
> — Donald Kennedy (1997: 138), Bing professor of environmental science and president emeritus, Stanford University

> *[T]enure, as it currently operates, has become more of a problem than a help to our endeavors. If we fail to recognize and address this issue ... we will make a costly mistake. Tenure must be carefully scrutinized now by the academy, so that narrow political interests do not impose destructive changes.*
>
> — C. Peter Magrath (1997: A60), president, National Association of State Universities and Land-Grant Colleges

These are not the sentiments of "right-wing politicians" or "anti-intellectual corporate executives." All four authors, in fact, are academicians, each a distinguished professor later appointed provost or president of a major American university. Nor are such views restricted to administrators, as if doubts about tenure were a virus afflicting only them. In a 1995-96 survey of 34,000 full-time college and university faculty, 35 percent of all respondents, 43 percent of respondents under age 45, and 46 percent of all women responding agreed that "[tenure is an] outmoded concept" that needs to be revamped or abandoned (Sax et al. 1996: 41, 93). Shirley Tilghman, professor of molecular biology at Princeton University, has suggested that universities "abolish tenure entirely, in favor of rolling appointments that are reviewed regularly," because "tenure is no friend to women" (1993: A23).

Beyond the academy there are critics aplenty, even when the well-publicized diatribes (e.g., Anderson 1992; Sykes 1988) are set aside. Richard Mahoney, former CEO of Monsanto and now an executive in residence at Washington University, has observed that "Universities are rapidly reaching the point at which they need to ask not 'Can we reform tenure?' or 'Dare we?' but rather 'How can we go about it?'" (1997: B5). Less reflectively, James Carlin, the outspoken, if not extremist, chairman of the Massachusetts Board of Higher Education, has labeled tenure an "absolute scam that has turned faculty jobs into sinecures, and made tuition excessive," and therefore should be eliminated (Healy 1997: A41). Indeed, attacks on tenure have become so commonplace that *The New York Times,* in an article entitled "The Ivory Tower Under Siege," has observed that "open season on faculty is ... generating pressure to modify or eliminate tenure" (Honan 1998: 46).

At the opposite pole stand proponents of orthodoxy, represented, for example, by Mathew Finkin, who wrote in *The Case for Tenure,* "I believe that academic tenure is good for America" (1996: 1); by the University of Illinois Seminar on Tenure, which concluded that the university "should retain the present system, whatever the deficiencies in human application, as the best means of guaranteeing both academic freedom and educational quality" (1996: 56); and by James Perley, president of the AAUP, who contends that "tenure and collegial governance, linked firmly to academic

freedom, have served us all.... Abandoning those concepts threatens to bring down the structure" (1997: A48).

Institutional Responses

The fervor of the extremes notwithstanding, a disposition to "mend not end" tenure appears to be dominant today. Disagreements exist both inside and outside the academy about the value and wisdom of various modifications. Nevertheless, many colleges and universities already have instituted significant changes, and further changes are under active consideration:

- In a 1994 Carnegie Foundation survey of 865 colleges and universities, 39 percent reported that "changes in the criteria by which tenure is awarded" had been implemented, and another 22 percent were considering such changes. (Glassick, Huber, and Maeroff 1997: 107)
- A few institutions have altered their criteria for removal of tenured faculty on the basis of performance. Among the new reasons for dismissal are "ineffective teaching" (Colby-Sawyer College), "serious instructional difficulties" (Ithaca College), and "continued or repeated unsatisfactory performance evaluations" (North Dakota Board of Regents). (see Trower 1996b)
- Of the respondents to the 1994 Carnegie Foundation survey, 46 percent reported that post-tenure review had been implemented in the past five years, and another 28 percent had such a policy under deliberation. (Glassick, Huber, and Maeroff 1997: 108)
- The percentage of universities with probationary periods exceeding seven years increased between 1974 and 1992 from 2.2 percent to 10 percent of public universities, and from 9 percent to 30 percent of private universities. (El-Khawas and Furniss 1974: 14; U.S. Department of Education 1996: 23)
- In a survey of 375 institutions, 80 percent of the "leadership colleges" (those with the most "family-friendly" policies) and 39 percent of all other respondents reported permitting faculty to remain on the tenure track yet stop the tenure clock for reasons related to childbirth, family care, or illness. (Wilson 1996: A14)
- Among 142 American and Canadian medical schools, 31 percent do not define tenure as including a salary guarantee. (Jones and Sanderson 1994; also see Bickel 1991)

In light of these developments and others elaborated below, David Breneman, dean of the Curry College of Education at the University of Virginia, has aptly remarked that the current

discussion of tenure has "an unreal flavor, because while spirited arguments fly back and forth at the level of high principle, the world to which these principles presumably apply is changing quietly and without fanfare toward a system marked by substantial diversity in employment arrangements" (1997: 11).

IDEAS IN INCUBATION

One goal of AAHE's New Pathways project is to chronicle and analyze changes already afoot. Thus, the project has produced papers on full-time, nontenure-track faculty (Gappa 1996), on part-time faculty (Gappa and Leslie 1997), on post-tenure reviews (Licata and Morreale 1997), and on campuses without tenure (Chait and Trower 1997), as well as a national overview of changes in policy and practice (Trower 1996b).

THE OBJECTIVE IS NOT, AND NEVER HAS BEEN, EITHER TO UNDO TENURE, AT ONE EXTREME, OR TO ENSHRINE ITS TRADITIONAL TENETS, AT THE OTHER.

Another goal of the project is to generate new ideas, for consideration primarily by the academic community, and secondarily by lay trustees and public officials. We want to broaden the boundaries of the discussion, enlarge the inventory of policy options, and expand participation in the conversation. The objective is not, and never has been, either to undo tenure, at one extreme, or to enshrine its traditional tenets, at the other. Rather, we hope to explore whether any variations on standard practice might be more advantageous to the interests of both the faculty and the institution.

In that spirit, Chabotar and Honan (1996) proposed new ways of measuring financial distress to determine the financial conditions that might warrant the dismissal of tenured faculty — that is, specific, operational criteria dramatically different from the AAUP's standard of "an imminent financial crisis [that] threatens the survival of the institution as a whole" (1990: 23). Breneman (1997) contemplated the possibility and practicality of a wage premium or other economic incentives to induce faculty to relinquish or not seek tenure. Byrne (1997) asked whether academic freedom could be ensured without academic tenure, and concluded that it could but that the costs to faculty morale and intellectual endeavor might be too high. (The section "Academic Freedom Without Tenure" later in this paper makes further use of Byrne's argument.) All three of these New Pathways papers were speculative.

The current essay, then, continues along similar lines, entertaining three other possible modifications to traditional tenure policies:

(1) tenure by objectives, a reconfiguration of the probationary period;

(2) post-tenure reviews that focus more on departments than on individual performance; and

(3) codification of academic freedom without tenure.

Tenure by Objectives[1]

More than a dozen separate studies in recent years (e.g., Bowen and Schuster 1986; Rice and Austin forthcoming; Sorcinelli 1992; Tierney and Bensimon 1996; Trower 1996a) have reached essentially the same conclusion: Tenure-track faculty are, by and large, an unhappy lot — a plight attributable mainly to the tenure process itself, a process vividly described by one commentator as "archery in the dark" (Rice 1996: 31).

> *The vast majority of assistant professors are either confused by the process or unaware of what is needed.... [M]ost candidates have a clear understanding [neither] of how the process works nor of the time frame.... Variations in the tenure process [are] also a mystery.... The end result is that people stagger to the end of the tenure review.* (Tierney and Bensimon 1996: 70-73)

The sources of stress and discontent cited by probationary faculty are remarkably similar from study to study and from campus to campus: "the ambiguity of the tenure process, the vagueness of success measures, and the uncertainty about the appropriate mix of teaching, research, and service" (Trower 1996a: 234). In a study of stress among faculty, Gmelch, Wilke, and Lovrich (1986) discovered that untenured faculty at lower ranks experience the greatest stress, and that the ambiguity of the reward and recognition structure is the factor that generates the most stress. "How many journal articles, books, or grants are expected? How important are one's teaching and service contributions in comparison with research accomplishments? These are the questions underlying faculty uncertainty" (282). As a rule, faculty do not learn until the end of the probationary period whether good enough was indeed good enough.

Some constructive steps already have been instituted. For example, the widespread availability of stop-the-clock leaves should ease conflicts between professional responsibilities and familial

[1] The central idea of this section emerged from several conversations with C. Ann Trower, then a doctoral student and now a senior researcher on the New Pathways project. Trower's findings precipitated discussions about how the anxieties of tenure-track faculty could be reduced. This, in turn, led to the delineation of the process we eventually labeled "tenure by objectives," or TBO.

demands. Of more immediate interest, however, are the core concerns of junior faculty about nebulous performance criteria, even vaguer statements of standards, mixed messages, and inaccurate and insufficient information. Probationary faculty generally have little or no access to potentially instructive data such as the dossiers of recently successful and unsuccessful tenure candidates or to reliable information about the reasons for positive and negative decisions about colleagues. Instead, rumor reigns.

One responsive measure adopted by some departments at MIT encourages that, to the extent possible, the composition of a tenure candidate's review committee remain constant throughout the probationary period. Fixed membership of the committee increases the prospects that the faculty member will receive consistent guidance and feedback; reduces the likelihood that the outcome of a seven- to eleven-year process will hinge on the chemistry and idiosyncracies of this year's committee; and deepens the committee's knowledge of the candidate's performance over time — the proverbial yet relatively rare "win-win" situation. (For another beneficial approach, see the box **Mentor Committees at Texas A & M University** on pages 8-9.)

Concerned with both flexibility for the institution and fairness to the candidate, Yarmolinsky (1996) advances the notion that

> *[tenure contracts be] negotiated, at the time the individual [is] hired, around the locus of the tenure commitment.... Assuming that this individual is to be offered an indefinitely extended association with the institution, across what range of the institution's academic mission are his or her talents likely to continue to be useful throughout an academic career? The answer would then define the locus of the tenure offer.* (1996: 19).

In other words, the scope of a candidate's demonstrated expertise would determine the locus of his or her tenure, which might range from a subspecialty in a specific field to a program, department, school, or college. If and when a tenured faculty member's expertise expanded, that locus of tenure could be extended. On average, faculty with narrower interests would enjoy a smaller measure of employment security than would colleagues with broader, interdisciplinary competencies. This is inevitable, because a narrower sphere of specialization, such as a disciplinary branch or program, is more vulnerable to discontinuation than is, say, an entire school or college.

How does Yarmolinsky's proposal relate to the predicament of junior faculty? He contends that this process, managed principally by the faculty, would

> *make more explicit, and potentially more varied, the contributions that will be expected of the candidate for tenure ... [and] also help resolve conflicts over the relative weights to be accorded within the classic triangle of teaching, research, and service. It is usually easier to resolve such*

> *conflicts in context, rather than in the abstract, where arbitrary definitions may prevail.* (1996: 19)

Like Yarmolinsky's approach, tenure by objectives (TBO) rests on explicit criteria, performance-based agreements, and demonstrated competence. Its premise is that reduction of ambiguity "should help to reduce a considerable amount of stress that [untenured] faculty experience" (Gmelch, Wilke, and Lovrich 1986: 282).

> *Genuine faculty development programs, coupled with an institutional policy of periodic assessment and goal setting meetings between individual faculty and the department chair, would permit the channeling of a faculty member's time and attention into a manageable, mutually agreed-upon and understood task area.* (Gmelch, Lovrich, and Wilke 1984: 489)

To be sure, no changes in policy or practice can (or should) eliminate all of the difficulties and anxieties that probationary faculty experience. Tension and stress are intrinsic to the tenure decision, and the stakes are substantial. Candidacy for tenure cannot be a cakewalk, but neither should it be a seven- to eleven-year trek over hot coals and glass shards that leaves even the winners sapped of creativity and enthusiasm for the profession — less overjoyed than "relieved, as if an illness [were] in remission" (Tierney and Bensimon 1996: 74). In the search for procedural changes that might be beneficial, tenure by objectives warrants discussion. How would it work?

At the start of a tenure-track faculty member's first year, the candidate, the department chair, and perhaps a mentor committee would establish a written work plan that described performance-related goals to be achieved over the course of the probationary period. (The document would resemble the growth plans some institutions require for post-tenure reviews of senior faculty, and the process would habituate faculty to producing such plans at regular intervals.) This "performance contract" would at least partially allay concerns among junior faculty about sudden, random, and even antithetical shifts in the expectations of their department's senior faculty and chair. The players might change, but the rules of the game would remain the same.

The precise mix of teaching, research, and service could be varied and weighted to reflect the tenure candidate's interests, the department's needs, and the institution's overall priorities.[2] The emphasis would be on manifest competency, not merely on the completion of tasks. For instance,

[2] An example of a policy that links faculty activity to departmental and institutional priorities is in "Additional Rules of the University Faculty Concerning Faculty Appointments, Promotion, and Tenure," adopted by the faculty senate of the Ohio State University in 1996. An example of weighted faculty effort is in the 1995 *Faculty Handbook* of Golden Gate University, where responsibility and accountability may be within ranges of "Scholarship" (50-80%) and "University Service" (20-50%). Within the realm of "Scholarship," the allocation may be "Teaching" (40-80%), "Integration and Application" (10-40%), and "Scholarship of Discovery" (0-40%).

Mentor Committees at Texas A & M University

The Department of Small Animal Medicine and Surgery in the College of Veterinary Medicine at Texas A & M University assigns a mentor committee, "composed of productive scholar/educators from the home department and other academic units" to each tenure-track faculty member. A committee of mentors allows the candidate to "turn for assistance to a group of interested colleagues" committed to the individual's success. With the concurrence of the candidate, the department head names the committee chair, and the committee chair and the candidate then select two or three additional members, including one whose gender must be opposite that of the candidate.

"The central responsibility of the committee, collectively and individually, is to advise the young faculty member in a formative manner that fosters optimal professional growth and that maximizes [the] chances for successful consideration for … tenure and promotion." Its specific responsibilities include:

- peer review of lecture and laboratory class objectives, class notes, examination questions, student evaluations, and teaching portfolio, and formative participation in classroom visitations;
- peer review of drafts of manuscripts and grant proposals;
- development of a five-year professional-development plan;
- advice about the development of collegial networks, time and stress management, campus politics, the balance of personal and professional lives; and
- assistance with preparation of dossier for tenure review.

The mentor committee meets with the candidate to review progress every three to four months, and individual committee members are encouraged to initiate informal conversations with the candidate. The committee chair meets with the department head twice a year to discuss the activities of the committee and the candidate's performance. To "ensure that there are no mixed signals about academic expectations," the committee chair receives confidential copies of all evaluation documents. At the time of the tenure decision, the department expects the committee to be an advocate for the candidate.

John August, the department head, cites numerous benefits of this system, for both the faculty candidate and the department. These include reduced stress levels

among junior faculty, improved camaraderie with senior colleagues, a far lower risk of intellectual isolation of probationary faculty, sharing of responsibility between the department head and senior faculty for the academic advancement and well-being of junior colleagues, and systematic, rather than ad hoc or random, attention to formative and summative peer reviews.

The department has experienced some difficulties with the program: Committee chairs must be prompted regularly to convene the group; some senior faculty are unconvinced of the need for the initiative; some resist serving on more than one committee; and the rewards for participation as a committee member are entirely intellectual.

This department awards all new junior faculty to a two-year pre-tenure-track appointment as clinical assistant professor and 25 percent of their start-up funds to prepare for the official seven-year probationary period. In these first two years, under the guidance of a mentor committee, faculty members teach, complete board-certification exams, develop a detailed five-year career plan, and submit articles for publication (typically drawn from a dissertation and residency program). Clinical assistant professors have "full faculty status" and "enjoy the same privileges" as senior colleagues. After eighteen months, the clinical assistant professor develops a dossier, and the department conducts an extensive review to determine whether to place the faculty member on the tenure track, a process that offers the candidate "an early feel for the tenure-review process."

Says John August, "During the recruitment and interview process, candidates often express doubts about the value of the system," especially the two additional years required to reach tenure and promotion. "When questioned later, however, the same faculty members are grateful for the opportunity to have established themselves in their new academic environment before the pressures of the tenure clock started."

Information and quoted material from John R. August, "Mentor Committees Enhance Early Faculty Development," (Texas A & M University), undated manuscript.

rather than specify a precise number and level of courses to be taught by the candidate, the plan might call for demonstrated ability to (1) design courses and syllabi; (2) teach introductory courses, advanced seminars, and executive education programs; (3) lead discussions; and (4) develop simulation or computer-based exercises. For each of these four domains, the candidate and the department could determine, at the start of the probationary period, what constituted appropriate and ample evidence of proficiency.

In a conventional tenure system, candidates neither negotiate a written work plan nor pass muster step by step. Instead, they labor for six or more years and then await a determinative, yes/no decision. Under a TBO plan, the candidate would be encouraged to submit, as part of each annual review, a portfolio of work samples and other pertinent documentation to substantiate competency and goal attainment in one or more specified domains. (The state of the art with respect to the content and format of teaching portfolios has become quite sophisticated. See, for example, Edgerton, Hutchings, and Quinlan 1991; Glassick, Huber, and Maeroff 1997.) If the department chair and/or mentor committee judged the evidence to be persuasive, the candidate's competency in that area would be established, or "certified." There might be a checkoff that signified the candidate's ability, for example, to teach introductory courses or advanced seminars at a level worthy of tenure. This aspect of the candidate's qualifications then would no longer be at issue for purposes of a positive tenure recommendation by the department. If, on the other hand, the evidence were judged to be inconclusive, the candidate would receive specific feedback about deficiencies and a possible course of action.

A similar procedure could be followed for service. What would constitute sufficient evidence of the candidate's capacity to be a constructive participant and occasional leader in a consensus-driven, collegial process of shared governance, or an active contributor to the discipline or profession? Departments and colleges would have to address these questions with the candidate at the outset. The evidence could be as simple as a list of committee memberships and leadership roles that exceeds a minimal threshold. Alternatively, a department might want testimony from peers, or products such as committee reports/recommendations drafted solely by the candidate or collaboratively. In any event, the candidate would be able to ascertain from the department whether evidence of his or her service-related work had reached a level sufficient to satisfy the standards for tenure, and if not, where to direct further energies.

Gmelch, Lovrich, and Wilke (1984) conclude that ambiguity of the criteria for tenure "seems to be a high contributor to faculty stress," but that "this uncertainty is higher for the teaching and service areas than for research" (489). Yet even in the research arena, tenure-track faculty would benefit from clearer, mutually determined objectives. Such a process could resolve confusion about the relative importance of quantity versus quality, funded versus unfunded research, applied versus theoretical research, quantitative versus qualitative methodologies, refereed versus nonrefereed publications and presentations, journal articles versus books or book chapters, textbooks versus original research. While the precise volume of research necessary for tenure cannot be predetermined, the candidate and the department chair or mentor committee should be able to sketch, at the start of the probationary period, the broad dimensions and characteristics of a body of work worthy of tenure. Moreover, as the pretenure period unfolds, the department should be able to convey with ever greater specificity what the candidate still needs to accomplish.

AS THE PRETENURE PERIOD UNFOLDS, THE DEPARTMENT SHOULD BE ABLE TO CONVEY WITH EVER GREATER SPECIFICITY WHAT THE CANDIDATE STILL NEEDS TO ACCOMPLISH.

Under TBO's normal circumstances, candidates would continue as long as the department observed satisfactory progress toward tenure, that is, as long as hurdles were cleared and objectives achieved at a reasonable rate. As mileposts were reached, the candidate's competency would be certified. Each candidate would proceed at an individual pace, influenced by his or her discipline, research agenda, and portfolio of responsibility. Not all members of a cohort would reach the point of a tenure decision at the same time; some might accelerate, others might be late bloomers.

In fact, such practices now exist: In a recent study by the Carnegie Foundation, 26 percent of the institutions surveyed already had installed and 9 percent were considering a policy that allowed "negotiating the length of the probationary period with individual faculty" (Glassick, Huber, and Maeroff 1997: 108).

While some upper limit (e.g., ten years) might be advisable or necessary to force a decision, the process would be driven more by results than by deadlines. In more than a few cases, however, there would be substantial evidence of inadequate progress, which would lead to nonreappointment with due notice. Negative decisions could be reached by the department faculty at any point in the process — the exact time would be a function of the degree of goal attainment.

Because under TBO the candidate's competency would be well documented and carefully assessed throughout the process, there should be far fewer instances of "gotcha!" in which candidates reach the tenure decision point only to be denied. Such surprises would be most likely to occur in departments with lax standards and inchoate traditions of self-regulation. To lessen the probability of such occurrences, the institution might, as a matter of policy, publish and share with all faculty recruits the tenure success rates of its departments. A woeful record surely would have a detrimental effect, self-inflicted, on a department's capacity to recruit.

Like every personnel policy, TBO has flaws. The system could become a triumph of form over substance if faculty and administrators became overly reliant on quantification; zealots could attempt to mechanize a process that ultimately and unavoidably entails subjective judgment. In addition, TBO as currently formulated does not effectively take account of the need for multiple layers of review. Where, when, and how would college- or university-wide review committees and senior academic administrators participate in the process? How would the system guard against "done deals," settled before recommendations reach a campus P&T committee or the provost or president? Conceivably, a higher-level portfolio evaluation could occur whenever a department believes that a candidate has satisfied all the requirements of a particular area, such as research. Or certifications in each area, in teaching, for example, might be reviewed by a school- or campus-wide panel of experts. Finally, although agreements certainly can be renegotiated and updated, TBO still could lead to conflicts, perhaps even litigation, about who meant what when objectives and standards were established or revised. (Of course, traditional tenure systems carry a comparable risk.)

Several important elements of TBO were borrowed from doctoral degree programs. Most doctoral programs delineate at the outset the requirements for the degree, such as a specific number and mix of courses, a minimum grade point average, successful completion of preliminary and comprehensive examinations, an acceptable dissertation proposal, and a defensible thesis. Candidates must clear a sequence of hurdles. While there are time limits, no department expects or requires all members of a cohort to finish in the same year; some may take four years, others ten. Students finish when the requirements have been satisfied within a comfortable time frame.

Furthermore, doctoral candidates have access to a substantial amount of information about performance expectations. Most programs make old preliminary and comprehensive examinations available, together with exemplary responses to the exam questions. Successful proposals and theses typically are kept on file in the library or in the department, and public dissertation defenses enable

other students to observe the process firsthand. (Typically, P&T committee meetings are closed to untenured faculty, but for ten years the School of Oceanography at the University of Washington has welcomed its junior faculty, excepting the candidate, to observe the senior faculty's deliberations to make more clear its process and the school's expectations.) Most significant in this information gathering, doctoral students regularly seek advice and criticism directly from committee members and other faculty. As Blackburn and Wylie (1985) have observed, tenure-track faculty are "often afraid to ask senior faculty questions about anything, especially about teaching, for fear that negative impressions will later be used by those who will be in the chairs on judgment day" (2).

Finally, most doctoral students have a stable dissertation committee that includes a lead advisor. Neither the committee's membership nor the performance standards are expected to change as the student proceeds. Once approved, a dissertation proposal represents the consensus of the committee — an agreement in principle with the student and a work plan to be reviewed chapter by chapter or draft by draft.

Do all doctoral programs and all doctoral students progress in a smooth and orderly manner? Of course not. However, as a rule the process provides adequate structure, predictability, and feedback at established mileposts. By comparison, the tenure process must seem to candidates like a several-year free fall. Surely tenure candidates require parachutes of some kind — if not TBO — to reduce anxiety and steady their course.

Post-Tenure Review of Departments

Of all the proposed modifications of conventional tenure policy, probably none has been more widely considered or adopted than post-tenure review. A 1996 survey of 680 institutions revealed that 61 percent had enacted a post-tenure review policy and that another 9 percent were considering such a policy; just seven years earlier, only three of forty-six AAU institutions had such a policy in place (Licata and Morreale 1997: 2). The trend continues as Kansas State, Iowa State, Pennsylvania State, and Texas A & M universities, to name only a few, move to enact post-tenure reviews, either as self-initiated reforms or in response to state mandates.

Licata and Morreale (1997) describe a wide range of approaches; most primarily formative, some primarily summative. Some involve reviews of all faculty at set intervals — every fifth year at the University of Wisconsin-Madison and the University of Oregon, every seventh year in Florida. Others involve selective reviews triggered by performance-related concerns — very low merit ratings

for two consecutive review cycles at the University of Kentucky and Virginia Tech, three consecutive smaller-than-normal salary increments at the University of Montana.

Assessments of the benefits and costs of post-tenure review policies are decidedly mixed. On the basis of a series of site visits and a review of prior research, Licata and Morreale conclude that well-conceived post-tenure reviews do provide occasions to enhance faculty development, to promote different career emphases, to match faculty career goals with institutional priorities, and to clarify performance expectations (1997: 30-31). In other words, post-tenure review can be beneficial, to the degree that the process occasions the investment of additional resources in the professional development of faculty.

POST-TENURE REVIEW CAN BE BENEFICIAL, TO THE DEGREE THAT THE PROCESS OCCASIONS THE INVESTMENT OF ADDITIONAL RESOURCES IN THE PROFESSIONAL DEVELOPMENT OF FACULTY.

A similar note was sounded in a recent report on post-tenure review by the AAUP's Committee A on Academic Freedom and Tenure (1997), which acknowledged that post-tenure review with a "predominant, if not exclusive, emphasis on faculty development" could have a salutary effect.

> *Such an emphasis, if properly buttressed by institutional resources without adversely affecting other aspects of the academic program, can in many instances result in discernible improvement in faculty performance across all quality and seniority levels, with a resulting enhancement of collegiality and institutional strength — with little or no real or perceived dilution of academic freedom or tenure.* (47)

This statement seems to signal a shift from the AAUP's earlier stance of November 1983, that "periodic formal institutional evaluation of each postprobationary faculty member would bring scant benefit, would incur unacceptable costs ... and would threaten academic freedom" (1997: 44). Though no longer categorically opposed to post-tenure review, the AAUP strenuously warns that the process "ought not be aimed at accountability," should not emphasize "disciplinary sanctions," and must not subvert established procedures for dismissal for adequate cause (which place the burden of proof squarely on the institution, irrespective of evidence accumulated through periodic review). In short, resistance to post-tenure review by the AAUP, and by faculty more generally, rises with the emphasis on summative evaluations and punitive measures.

Thus, proponents of post-tenure review as a managerial tool of accountability, and more specifically to remove faculty "deadwood," surely will encounter impassioned opposition and almost certainly experience considerable disappointment. Quite simply, post-tenure reviews will not — and

should not, most faculty would assert — generate the pink slips that some regents, lawmakers, and critics of the academy deem necessary to enhance quality and enforce accountability. In 1,079 post-tenure reviews at the University of Hawaii at Manoa during the past ten years, not a single faculty member was dismissed, although of the 77 tenured professors found to have significant deficiencies, 28 retired, on average four years after the review (DesJarlais and Wood 1998).

If increased funding for professional development (the faculty's primary barometer of a successful post-tenure review policy) is as improbable a scenario as termination for cause (the policymakers' measure of success), does post-tenure review still make sense? From a political perspective, the answer may be yes. The voluntary installation of post-tenure review systems by colleges and universities creates a beneficial impression of responsiveness to public concerns and a recognition that faculty are not beyond the reach of performance evaluations. (Legislating post-tenure review is equally astute for elected officials, because they thereby demonstrate sensitivity to constituents' discontent while averting a showdown with higher education.) From the faculty's viewpoint, post-tenure review is a fire wall to protect institutions from even greater damage, such as board resolutions, legislative proposals, or public referenda to abolish tenure altogether. Several colleges and universities have instituted post-tenure review as a way to forestall, or better yet avoid, a direct assault on tenure. By the time an institution has had five to ten years of experience with post-tenure review, the reasoning goes, public and legislative attention will have turned to some other *crise du jour*. If not, however, the note likely will come due, because there will have been few dismissals and little empirical evidence to show that faculty performance improved as a result of the process.

Even if the evidence can be marshaled, higher education faces the question provocatively raised by McPherson and Winston (1996): So what?

> *In the university where the tasks are final once the employment guarantee (tenure) is made, monitoring performance has little value, for there is little to do with the information. To be sure, information about tenured faculty can influence the rate of wage advance to some degree and can serve as a basis for moral suasion, but the central use to which such information is put in the corporation, to shape the path of the worker's career advance, is markedly less available within an academic institution.* (105)

Without explicit reference to post-tenure review, those authors later offer an observation with profound implications for such policies:

> *Given the logic of the academic employment structure, it is far from obvious that intensive hierarchical efforts to evaluate and motivate senior faculty in fact make much sense. Monitoring worker performance is an expensive activity, and it may in itself have a negative impact on morale.*

> *It may be perfectly sensible, if there is little to be done with the information that is gathered anyway, to limit monitoring to what is needed to detect gross malfeasance and to the spontaneous monitoring of each colleague by his peers and to accept that a certain amount of "deadwood" is an unavoidable by-product of the system.* (116)

McPherson and Winston are hardly the only skeptics. A "Report of the University of Illinois Seminar on Tenure" (1996) expresses the fear that post-tenure review "across all faculty ranks every three to five years would be enormously wasteful of faculty time and effort" (57). Licata and Morreale (1997), while generally supportive of post-tenure review, caution that the process could involve "inordinate requirements of time and resources" with "little guarantee of benefit" (31).[3]

Concerns about the cost-benefit ratio of post-tenure reviews instigated by temporal cycles rather than by severe symptoms, coupled with concerns about the unrealistic and contradictory expectations of faculty and policymakers, have prompted the search for another approach. Ultimately, we landed on the idea of post-tenure reviews of departments,[4] rather than of individuals.

In essence, under such a system the review of tenured faculty would be embedded in the larger context of a comprehensive departmental assessment, to be performed roughly every seven years, by both internal and external peer experts. Many colleges and universities, as well as disciplinary and professional accreditors, already require program reviews. Indeed, "academic program evaluation has been an integral part of higher education throughout its history" (Craven 1980: vii). Traditionally, program reviews focus on quality, centrality, and costs in order to inform decisions about program continuation, enhancement, modification, and less frequently, consolidation or termination (Munitz and Wright 1980). In the academic realm, the core areas to be assessed typically include clarity, coherence, and relevancy of mission; comparative advantage and opportunity; external reputation; vitality of research programs; quality of faculty and students; governance and leadership; and level of support. In addition to conducting self-studies, institutions typically collect data on enrollment and placement trends and projections, measures of student quality, demand from nonmajors, course syllabi, curricular requirements, faculty vitae, funded research, facilities, and library resources. (For a list of suggested data applicable to academic areas, see the box **Data Collection for Academic Program Review at Northwestern University** *opposite*.)

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[3] These writings both beg an even more elementary question: whether faculty-development programs, however triggered, can alter faculty performance and behavior (Sultz 1989).

[4] For colleges with very small departments, a more appropriate unit of analysis might be a division, such as the arts or the sciences.

Data Collection for
Academic Program Review at Northwestern University

Program reviews are intended to "encourage improvements in the quality of each unit ... and to provide a collective basis of refined judgment by the members of each discipline or profession on current strengths and weaknesses, areas of comparative opportunity, important future developments in the discipline or profession that need to be addressed, the relationship of existing faculty and staff resources to anticipated developments and areas of opportunity, the quality of leadership, the adequacy of resources, and the relationship of each unit to other academic areas" (1989: 11). It is suggested that the following data be collected:

Faculty
- number of faculty by rank, tenure status, time status, gender, and minority representation;
- average faculty salaries, including AAU comparisons;
- teaching responsibilities;
- level of sponsored research;
- listing of publications/creative work in vitae;
- faculty age profile to project faculty flow patterns; and
- current vita for each full-time faculty member.

Students
- number of enrollments by student level; number of applications and acceptances; attrition rate;
- number of students by gender and minority representation;
- average ratings by various student ability measures (SAT, ACT, high school class rank, GPA, GRE, LSAT, MCAT); and
- student financial aid figures, differentiated by student level.

Department/Unit
- listing of degree programs;
- number of degrees awarded, by level;
- numbers of courses taught, by level;
- proportion of enrollments by major and nonmajors;
- class size distributions;
- student evaluations of courses and teachers;
- graduate program quality ratings;
- proposal and grant activity; and
- facilities/sites used in clinical training programs.

Resources
- budget sources;
- support staff;
- travel, colloquia, library, and supplies/expenses;
- capital equipment; and
- space by type.

From Northwestern University 1989, 1997.

Northwestern University's system of program reviews is a nationally recognized model. Its self-study results, a report from external reviewers (of whom there are usually two), and the data packet are critically examined and evaluated by a subcommittee of the Program Review Committee (PRC) comprising senior faculty and administrators appointed by the president on the recommendation of the faculty senate's Committee on Committees. The report of the external reviewers addresses "strengths, weaknesses, personnel, leadership, and opportunities" (Northwestern University 1997: 6). The PRC subcommittee drafts a report for review and approval by the entire PRC, whereupon the subcommittee meets with the president, provost, dean, and other appropriate senior administrators to discuss the final report. Subsequently, all department faculty receive the report and meet with the senior officers. Two years later, the faculty file a follow-up report on the unit's progress. The cycle starts anew every seven years, with the prior review as the point of departure.

THE NORTHWESTERN MODEL, OR SOME EQUALLY EXTENSIVE, RIGOROUS, AND FOCUSED VARIATION, MIGHT OFFER AN ATTRACTIVE ALTERNATIVE, OR REASONABLE CONTINGENCY, TO THE CYCLICAL REVIEW OF ALL TENURED FACULTY.

The Northwestern model, or some equally extensive, rigorous, and focused variation, might offer an attractive alternative, or reasonable contingency, to the cyclical review of all tenured faculty. The operative agreement could be that if, on the basis of substantial evidence, an intensive internal and external program evaluation concludes that the department under review performs on the whole at a satisfactory (or higher) level, then no evaluation of its individual tenured faculty members is necessary. In other words, as long as the *unit* performed well, functioned effectively, and produced acceptable outcomes, the relative contributions of its individual faculty members would not be scrutinized through a post-tenure review process. (Evaluations for salary adjustments and promotions would continue, of course.) The supposition — some would say article of faith — is that an effective department by definition has an effective faculty.

There might be one exception to the rule: A majority of the tenured faculty in a department that is judged satisfactory could have the option of requiring that a colleague undergo a post-tenure review (a policy already in place at the University of Idaho). Such a policy could keep the most egregious laggards from shirking responsibility or missing the opportunity to pursue professional development.

In instances where the departmental review uncovered significant problems or concerns (e.g., related to overall quality of the faculty, confusion over mission, soundness of the curriculum, sparseness of research, or governance dysfunction), then and only then the dean or provost, perhaps with the concurrence of the Program Review Committee, might institute a performance review of all tenured faculty in the department. Here the supposition is reversed: An ineffective department is assumed to have some ineffective faculty members.

For departmental evaluations to be successful in replacing or triggering post-tenure reviews, both internal and external evaluators should be directed to devote attention to areas that conventional program reviews tend to slight, such as the standards, criteria, and procedures used for routine or annual faculty evaluations; the documentation of faculty-development activities; the degree to which the department rewards excellence (e.g., the distribution of merit pay); and the process invoked to reinvigorate or prune subpar performers.[5] In other words, for departmental reviews to perform the functions of post-tenure review, the evaluators must delve more deeply into the policies and practices the department employs to gauge and regulate faculty quality than if the review were confined to the academic program alone.

What commends post-tenure reviews of departments over post-tenure reviews of individuals?

- Foremost, review of departments is more time-efficient and cost-effective, and by a significant margin. Under such a system, an institution might review fifty departments, as opposed to 500 tenured professors, every seven years. Individual post-tenure reviews would be the exception, not the rule, activated only by a peer determination that a departmental colleague's performance was unsatisfactory.
- Review of departments is consistent with the strong likelihood that there will be neither massive infusions of new funds for faculty development nor even occasional dismissals for cause — the paramount policy objectives that faculty and policymakers, respectively, attach to post-tenure review. McPherson and Winston (1996) capture the dilemma succinctly in a comment about term contract systems that is equally applicable to post-tenure review: "The resources required to evaluate everybody seriously every few years would be simply enormous. If such evaluations did not result in many dismissals, they would be largely wasted. If they did, the university would bear the costs of great turnover" (118).

[5] I am grateful to J. Ronald Galli, dean, College of Science, Weber State University, for this suggestion.

- The emphasis on departments underscores a faculty's collective responsibility; whether every tenured faculty member has to "endure" a post-tenure review depends on the department's overall performance. Such an incentive structure thus stimulates each senior faculty member to encourage and nudge his or her colleagues to do well — a condition absent from traditional post-tenure review plans.
- Review of departments focuses far more attention on a department's value to the institution and far less on the performance patterns of outliers. Stated another way, departmental reviews are strategic; individual reviews are tactical.

To propose post-tenure review of departments should not be construed as calling for the end of post-tenure review of individuals. Quite to the contrary, the purpose here is to augment, not shrink, the catalogue of options. Post-tenure review of faculty is too new a notion to judge definitively. It might work well on some campuses and not on others. Where it is unsuccessful, post-tenure review of departments might prove to be a better alternative, or at least a worthy experiment.

Academic Freedom Without Tenure

Arguably, there has been no greater change in the composition of the American faculty over the past twenty-five years than the increase in the proportion of faculty members without tenure, most notably those with part-time and nontenure-track appointments. The most recent data available are remarkable:

- Between 1970 and 1995, the proportion of part-time faculty nearly doubled, from 22 to 41 percent. In absolute numbers, part-time faculty increased 266 percent, from 104,000 to 381,000; full-time positions rose just 49 percent, from 369,000 to 551,000. Of part-time faculty in 1995, 47 percent were women, 36 percent were men. (U.S. Department of Education 1998)
- In 1995, almost two-thirds of faculty members at two-year institutions and one-third at four-year institutions were part time. (U.S. Department of Education 1998)
- In 1975, some 28 percent of full-time faculty were on tenure track; twenty years later, only 19 percent were. In the same period, the percentage of nontenure-track full-time faculty increased from 18 to 27 percent. (U.S. Department of Education 1998)
- The portion of full-time faculty with tenure remained constant between 1975 and 1997, at about 54 percent. But data from 1993 indicated only 36 percent of the *total* faculty (full time

plus part time) were tenured. When graduate assistants were included, the percentage of faculty with tenure dropped to only 25 percent. (Benjamin 1998)

- In 1995, half of full-time faculty members (51%) were hired on nontenure-track lines. "If we take into account the profusion of part-time and off-track appointments, it seems that perhaps as few as 38 to 40 percent of all faculty appointments made in recent years are 'traditional' in the sense of being full-time and either tenured or tenurable" (Schuster 1998: 50).

This trend has been decried by many scholars (e.g., Benjamin 1998; Schuster 1998) and in a statement endorsed by the AAUP (1997) and the heads of eight disciplinary organizations. For better or worse, the academy now operates in an environment where a distinct minority of all faculty are tenured and enjoy a right to academic freedom conferred by that status. If, as the AAUP declared in 1940, academic freedom, buttressed by academic tenure, is "indispensable" to the practice of the profession, then to quote a famous astronaut, "Houston, we have a problem."

IF... ACADEMIC FREEDOM, BUTTRESSED BY ACADEMIC TENURE, IS "INDISPENSABLE" TO THE PRACTICE OF THE PROFESSION, THEN TO QUOTE A FAMOUS ASTRONAUT, "HOUSTON, WE HAVE A PROBLEM."

Many efforts are under way to reverse the trend of growing reliance on nontenure-track and part-time appointments. Whether these efforts will bear fruit and overcome the opposing economic and programmatic imperatives remains to be seen. In the meantime, AAHE's New Pathways project has explored a controversial and, in some respects, problematic approach: to provide academic freedom without benefit of tenure. In *Academic Freedom Without Tenure?* Byrne (1997) outlines the key elements of a procedure that "does seem [to] fully protect the familiar terrain of academic freedom" (13). With regard to the wisdom and practicality of such a policy, however, Byrne is openly ambivalent:

> *Colleges and universities that do not maintain a tenure system can adopt procedures that will still provide legal and practical substance to academic freedom for their faculty. The explicit promise of academic freedom, coupled with the opportunity to bring complaints at reasonable cost before a panel dominated by faculty, can give bite to core academic liberties not otherwise functionally protected.*
>
> *On the other hand, it is more difficult without tenure to construct alternative procedures that ensure more subtle aspects of academic freedom. Tenure has preserved the preeminence of peer review in faculty evaluation, and that is a powerful safeguard for free inquiry and discussion, as well as a support for intellectual values in higher education. If tenure is put aside, new structures must be found to preserve peer review.* (1997: 15-16)

As might be expected, Byrne's essay sparked responses, some favorable (Magrath 1997), some not (Wiener 1998),[6] and some constructively critical (Chemerinsky 1998). Even if one were to agree for purposes of argument that any assurance of academic freedom without tenure is imperfect and not as robust as an assurance with tenure, the fundamental problem persists: Most faculty today do not have tenure, and that fact seems unlikely to change in the foreseeable future.

The academy thus has at least two choices, which are not mutually exclusive:

- to champion the virtues of tenure and urge the creation of more tenure-track slots;
- to devise the best means possible to assure the academic freedom of faculty without tenure.

In pursuit of the second option, the New Pathways project commissioned Martin Michaelson, former counsel to Harvard University and now a partner at the Washington, DC law firm of Hogan & Hartson, to codify for a faculty handbook the general principles that Byrne had articulated. After presenting a first draft for review by an advisory panel of law professors, university administrators with legal backgrounds, and a federal judge, Michaelson produced a draft "**Academic Freedom Policy and Procedures.**" (See the box that begins on page 28.) As his preface underscores, the document should be viewed as entirely exploratory, a good faith effort to advance the discussion of whether — and if so, how — untenured faculty can be guaranteed academic freedom.

CONCLUSION

This paper, like the other Working Papers in AAHE's New Pathways series, is intended to stimulate constructive conversations about faculty employment arrangements and to expand the range of policy options under consideration. To introduce possible changes in the status quo for purposes of discussion courts risks and invites speculation about motives. But to stand pat or predictably to denounce every variation on hallowed tradition seems counter to the spirit and ethos of the academy and oblivious to the reality that higher education can no longer do business as usual.

We would not counsel that any college, university, school, department, or discipline adopt verbatim particular policies or reforms, whether promulgated by national associations or originated by the New Pathways project. In short, the project is neither for nor against particular practices or reforms, whether conventional tenure, post-tenure review, nontenure tracks, contract systems, or any

[6] Unfortunately, Wiener grossly and tendentiously misstates Byrne's argument in an intemperate polemic awash with factual errors.

other approach. Rather, the overall interests of the academy are best served by new ideas, by robust yet civil debate, and by local determination of best policy and best practice. If this effort has succeeded, it will have played a role more akin to a department of religion than to a seminary.

The final word is left to Robert O'Neil, a princely colleague, a distinguished scholar, a vigilant defender of free speech, and a former university president:

> *As a lifelong card-carrying AAUP member, I am sometimes tempted to draw a line in the sand on issues like post-tenure review, repeated studies of the tenure system, and experimentation with nontenure track alternatives. A moment of reflection brings me to a quite different view.... Unless the proposal is inherently unsound, immoral, or illegal, would we not better serve the ultimate cause of faculty autonomy and accountability by signing on early, and thus becoming part of the solution rather than being perceived as parts of the problem?... Better faculty personnel systems may well exist.... The fact that I have not seen such a system does not mean it may not exist.* ■

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About This
Draft "Academic Freedom Policy and Procedures"

The sample faculty code language presented *opposite* attempts to protect the academic freedom of faculty without tenure at a hypothetical institution. Will this effort be mistaken by some as opposition to tenure? Can faculty who are steadfastly committed to tenure assess such an effort in a fair-minded way? Should universities be free to explore new employment arrangements for long-term, untenured faculty; or will any such exploration, however careful, be seen as a betrayal of the hard-won gains of academic freedom? Is it possible to keep healthy the one leg of tenure, *academic freedom,* without simultaneously exercising the other, *permanent economic security*?

Whatever the answer to these questions and whatever the merits of tenure (and there are many), more than at any time in recent history college and university governors are expressing doubt that traditional tenure systems are vital to or consistent with the missions of their institutions. The examination and implementation of alternatives are under way and are very likely to continue.

Some defenders of traditional practices assert that any discussion of guarantees of academic freedom to *all* faculty, tenured and untenured, disserves the public interest, because adoption of such policies could motivate more-general reforms to decouple academic freedom from tenure. Some professors believe that the presence of tenured faculty on a campus sufficiently assures the academic freedom of untenured colleagues there. That claim seems debatable. Compelling reasons not to assure explicitly the academic freedom of untenured, nontenure-track, and part-time faculty are hard to identify. An effort to specify processes for the protection of the academic freedom of all faculty, regardless of their status, seems congruent with the principles that animated the idea of tenure in the first place.

The following draft, although specific, is merely an illustration of a general approach. The exact terms suitable at a given institution will depend on circumstances particular to that institution. Some institutions may prudently decide to exclude the provisions regarding program discontinuance and financial need (sections 8 and 9) or to depart from the proposal in other ways.

There is no claim here that this sample code is by any means the best that could be written to guarantee academic freedom to all faculty. The draft is incomplete, somewhat cumbersome, and written by a lawyer. Its provisions are untested in practice, and some are potentially burdensome to the institution. It is intended only to engender the kind of conversation for which nearly all experienced professors are highly qualified. As for the possibility that narrow self-interest will skew analysis, we shall see.

— Martin Michaelson

Academic Freedom Policy and Procedures

The following provisions related to the authority and governance of the faculty of the University were adopted by resolution of the Trustees on _____ , 19____ :

1. The University's ability to perform its mission depends on the vigorous and unimpeded exercise of the faculty's academic freedom. The University assures the academic freedom of the faculty, consonant with these views from the 1940 Statement of the American Association of University Professors and the Association of American Colleges:

(a) Teachers are entitled to full freedom in research and in publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

(b) Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. Any limitations of academic freedom because of aims of the institution shall be clearly stated in writing at the time of the appointment.

(c) University teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they shall be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence, they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

2. The foregoing principles shall apply to all personnel of the University to the extent that they function in a faculty capacity, and shall apply no less to the least experienced faculty member of the University than the most experienced, no less to the most junior than the most senior, and no less to part-time than full-time faculty.

3. The University shall not discipline, terminate, dismiss, non-renew, or otherwise disadvantage in faculty perquisites or faculty status, by reason of his or her exercise of the academic freedom assured by Section 1, any member of the faculty.

4. Cognizant of the expertise of the faculty in the customs and usages of academic freedom, the University vests substantial and extensive responsibility in the faculty, pursuant to the processes identified in Section 5, for the application of the academic freedom principles set forth in Section 1.

5. (a) Concerns related to perceived infringement of academic freedom, like other kinds of concerns, sometimes best can be addressed and resolved through informal communication and conciliation. Should such methods, in the judgment of a faculty member who has such concerns, be unsuccessful, infeasible, or undesirable, the following recourse is available: A faculty member who believes that his or her academic freedom assured by Section 1 has been detrimentally infringed by the University may refer the matter by written complaint not later than 60 days after the asserted infringement (unless compelling reason is shown for a longer period, not to exceed one year) to a Committee ("Committee I") of five members, conjointly appointed by the President and the Chair of the Faculty Senate, at least four of whom shall be full-time members of the faculty.

(b) The term of a member of Committee I shall not exceed participation in more than six cases before the Committee, nor shall any member be appointed to a maximum term of more than three years. No member of Committee I shall serve consecutive terms. Upon initiation of Committee I, one member shall be appointed to a maximum term of one year, and two members shall be appointed to a maximum term of two years. The President and the Chair of the Faculty Senate shall conjointly fill vacancies as they occur. No member of Committee I who holds appointment in the grievant's academic department shall participate in consideration of the case by Committee I in which event a substitute member to serve for the case shall be appointed by the President and the Chair of the Faculty Senate conjointly. Upon agreement of the President, and a majority of the Faculty Senate present at a meeting at which there is a quorum, the terms of future members of Committee I and the size of the Committee in future cases may be modified in light of judgment and experience.

(c) A grievant may withdraw his or her complaint at any time before, or with the consent of Committee I after, the grievance has been fully submitted to Committee I for decision.

(d) Committee I shall conduct its review of the matter in accordance with such fair and efficient procedures as the Committee may from time to time adopt in consultation with the University Office of General Counsel. Committee I shall elicit stipulated facts from the parties whenever in its judgment doing so will tend to expedite its review; shall not be bound to follow formal rules of evidence that might otherwise obtain in a court of law; and may determine to review a given matter on the basis of written submissions of the parties, or may hold a hearing, or may both elicit written submissions and hold a hearing.

(e) If Committee I finds the grievant's complaint to be insubstantial, it shall report that finding summarily to the President, and shall issue no other report on the matter. In all other cases that proceed to disposition Committee I, within 60 days after its receipt of the complaint or such minimally longer time as is essential, shall make and convey to the President or the President's designee written findings of fact (which may be summary in form) and shall

also state in writing whether and in what respects Committee I believes that the grievant's academic freedom assured by Section 1 was infringed by the University in the matter.

(f) The President or the President's designee shall adopt the findings and conclusion of Committee I unless the President or designee determines, with or without further review as the President or designee may elect, that the findings and/or conclusion are clearly and materially erroneous. The President or designee shall report his or her view of the matter in writing to the grievant, and shall specify in good faith and cause to be implemented steps to remedy, in accordance with Section 3, infringement by the University of the academic freedom assured by Section 1.

(g) If Committee I concludes that the President's past conduct is directly at issue, the matter shall be reviewed by the Trustees or their designee, in lieu of review by the President or the President's designee. The Trustees or their designee shall adopt the findings and conclusion of Committee I unless the Trustees or designee determine, with or without further review as the Trustees or designee may elect, that the findings and/or conclusion are clearly and materially erroneous. The Trustees or designee shall report their view of the matter in writing to the grievant, and shall specify in good faith and cause to be implemented steps to remedy, in accordance with Section 3, infringement by the University of the academic freedom assured by Section 1.

6. Nothing in Section 5 shall derogate from the right of a faculty member who claims detrimental infringement by the University of his or her academic freedom assured by Section 1 to assert against the University the claim or the underlying facts in any external forum of competent jurisdiction. In the event of such assertion made before Committee I, the President, Trustees or designee, as the case may be, have concluded their review of the matter, or in the event of the grievant's resignation, acceptance of full-time employment elsewhere, or death, Committee I, the President, Trustees or designee, as the case may be, may elect to suspend or terminate their review of the matter without a finding.

7. Each faculty member shall enter into a contract of employment with the University on such terms, including terms of employment of definite or indefinite duration, as are mutually agreeable, and such contract may be terminated in accordance with the contract, or mutually amended from time to time, provided that

(a) Sections 1 through 6 are deemed a part of the employment contract of the University and the faculty member;

(b) the grounds for termination or dismissal, other than for term expiration, of any faculty member who has served continuously on the University full-time faculty for at least eight years shall be no less advantageous to the faculty member than are these grounds individually

and collectively: grave misconduct, neglect of duty, program discontinuance, and financial need; and

(c) the rights of review provided by Section 5 shall, without limitation of Section 5, be available to a faculty member who claims that non-renewal of his or her employment contract is attributable to detrimental infringement by the University of the academic freedom assured by Section 1.

8. (a) Program discontinuance and financial need shall be grounds for termination of a faculty member (other than a faculty member terminated upon term expiration), absent express terms to the contrary in the faculty member's employment contract, only if preceded by the written report of a committee ("Committee II") as to whether the University's educational mission (in the case of program discontinuance), or the pertinent academic unit's long-term financial soundness (in the case of financial need), clearly justify termination on that ground. The University shall not terminate a faculty member on either ground unless the President and at least 75 percent of trustees then in office conclude in accordance with Section 8(c) that the University's educational mission (in the case of program discontinuance) or the academic unit's long-term financial soundness (in the case of financial need) clearly justify the termination in the light of compelling evidence.

(b) Committee II shall be a standing committee of 11 members, including five full-time members of the faculty (each of whom has at least ten years full-time faculty experience in higher education) who are not deans or department chairs of the University, five deans and department chairs of the University, and one former member of the University community, or other distinguished person not then employed by the University, who has at least 15 years experience in higher education as a faculty member and/or administrator. The President shall appoint the members of the committee to serve staggered three-year terms. To that end, initial members of Committee II may be appointed to appropriately shorter terms. The President shall fill vacancies as they occur. Committee II shall issue its report within 45 days after a request by the President that it do so or within such shorter or longer time as the President and Committee II agree. No member of Committee II shall participate in the Committee's review of a matter that involves an academic unit for which that member is responsible.

(c) No faculty member (other than a faculty member terminated upon term expiration) shall be terminated on the ground of program discontinuance or financial need if Committee II recommends against the termination, unless (i) the President first issues a written report that addresses with particularity the report of Committee II and that demonstrates that potential alternatives to termination, including reassignment and other alternatives, have been thoroughly considered and found unsound, and (ii) at least 75 percent of trustees then in office ratify the President's report or issue a written report of the Trustees that addresses with

particularity the report of Committee II and the unsoundness of potential alternatives to termination, including reassignment and other alternatives.

9. A faculty member (other than a faculty member not renewed upon term expiration) terminated by reason of program discontinuance or financial need shall receive severance compensation equivalent to not less than _____ months' compensation, at the faculty member's current rate, for every year of faculty service by the faculty member at the University, not to exceed _____ years' compensation.

10. (a) No faculty member who has served full-time on the faculty at least eight continuous years shall be terminated or dismissed on the ground of grave misconduct or neglect of duty, and

(b) no faculty member shall be disciplined, terminated, dismissed or otherwise disadvantaged in faculty perquisites or faculty status, on the ground of misconduct or deficient performance,

(c) without recourse at the election of the faculty member to the pertinent review process specified in this Section, which process shall be alternative to the process specified in Section 5,

(d) provided that this Section 10 shall not pertain to a faculty member not renewed upon term expiration.

[Specify here extensive review process available in cases of alleged grave misconduct and neglect of duty by covered "eight-year faculty"; and specify separate review process in other cases of alleged faculty misconduct and deficient performance.]

11. Sections 1 through 10 are intended to express fundamental policies of the University and shall not be amended unless

(a) a majority of the Faculty Senate present at a meeting at which there is a quorum so recommends and the recommendation is accepted by the President and Trustees, or

(b) at least 75 percent of the trustees then in office, following extensive consultation of the faculty by the Trustees or their designee, agree to do so. No amendment to Section 11(b) shall be applied to affect adversely the employment contract rights then in effect of a faculty member, nor shall any such amendment be effective until at least one year following adoption.

Author: Martin Michaelson, partner, Hogan & Hartson

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Where Tenure Does Not Reign: Colleges With Contract Systems

by **Richard Chait**, professor, and **Cathy A. Trower**, senior researcher, Harvard University, Graduate School of Education

Presents the experiences of campuses without tenure and campuses where faculty may choose tenure or contracts. Issues covered include academic freedom, faculty recruitment, selectivity, turnover, and reward structures. Answers the question, "What lessons can be learned from campuses with contract systems?" (#FR03WP, 34PP, MARCH 1997)

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Conceptualizes one or more procedures where academic freedom could be uncoupled from academic tenure — where some other means are offered to ensure the professoriate the unfettered opportunity to teach and conduct research — and explores the tradeoffs involved in doing so. (#FR05WP, 25PP, JANUARY 1997)

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by **Ann Ferren**, vice president for academic affairs and professor of education, Radford University

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by **Christine M. Licata**, associate dean for academic affairs, Rochester Institute of Technology, and **Joseph C. Morreale**, vice provost for planning, assessment, and research and professor of public administration, Pace University

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